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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,223	04/17/2004	Joseph J. Sacco	Sacco 1-1	1168
7590	06/27/2006			
Matthew J. Hodullk 9 Cross Brook Califon, NJ 07830			EXAMINER AYRES, TIMOTHY MICHAEL	
			ART UNIT 3637	PAPER NUMBER

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/826,223	<b>Applicant(s)</b> SACCO ET AL.	
	<b>Examiner</b> Timothy M. Ayres	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____                                                 |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/23/04</u> .                                                            | 6) <input type="checkbox"/> Other: ____                                     |

### **DETAILED ACTION**

This is a first office action on the merits of application SN 10/826,223.

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the apparatus with one rigid sheet as recited in claims 1 and the material magnetically adhered together as recited in claim 5 and 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc. Particular the phrase "present invention" in line 5 of the abstract.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 5 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The sheets are not shown nor described in the specification with an element to allow them to be magnetically adhered to one another.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding claims 1, 9, 18, and 19, It is unclear whether the applicant is claiming an apparatus or an apparatus in combination with a cabinet or with an interior space of a cabinet. If the applicant intends to claim only the apparatus, all recitation of the combination must be removed. If the applicant intends to claim the combination, the preamble of the claims must be amended to reflect this.

8. Regarding claims 3, 5, 6, 7, and 8, it is unclear how at least one rigid sheet of planar material is referred to in the plural as said sheets of material.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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11. Claims 1, 2, 4, 9, 10, 12, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 1,326,832 to Baily in view of US Patent 1,624,741 to Leppke. Baily teaches a cabinet (1) that has a door (2) with a plurality of rigid sheet material or pages (5) for display. The pages (5) have hinge tubes/mechanism (6,9) integral formed such that a hinge pin (8) insertable therein. Note that it has been held that the term "integral is sufficiently broad to embrace constructions united by such means as fasteners and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973). The hinge pin (8) is attached to the cabinet with a flange housing (7) by being inserted therein. The hinge mechanism (9) is offset at angles as seen in figure 2. Baily does not expressly disclose the pages being attachable by a magnet. Leppke teaches a sheet (1) that can attract magnets in order to display letters or other known magnet objects. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the sheets/pages of Baily by making them capable of receiving magnets as taught by Leppke to be able attach magnets of letters for display or education purposes (Leppke '741, Lines 28-40). The method is obvious given this structure.

12. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 1,326,832 to Baily in view of US Patent 1,624,741 to Leppke as applied to claims 1 and 9 above, and further in view of US Patent 752,463 to Morris. Baily in view of Leppke discloses every element as claimed and discussed above except tab sections. Morris teaches a cabinet with pages (E) with tab sections on the edges to allow a user to access the correct page of the first aid manual. At the time of the

invention it would have been obvious for a person of ordinary skill in the art to modify the sheets of Baily in view of Leppke by adding tabs as taught by Morris to allow faster and easier access to the correct page.

13. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 1,326,832 to Baily in view of US Patent 1,624,741 to Leppke as applied to claim 1 and 9 above, and further in view of US Patent 2,180,224 to Devall. Baily in view of Leppke discloses every element as claimed and discussed above except the sheets magnetically adhered to one another. Devall teaches rotating sheets/pages that are attached together via snaps fasteners (23). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the sheets/pages of Baily in view of Leppke by adding fasteners on the pages as taught by Devall to allow some of the pages to be separated from the others in units. Regarding then pages being magnetically adhered, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to use a magnet fastener versus a snap fastener since they are functional equivalents and, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

14. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 1,326,832 to Baily in view of US Patent 1,624,741 to Leppke as applied to claims 1 and 9 above, and further in view of US Patent 4,852,282 to Selman. Baily in

view of Leppke discloses every element as claimed and discussed above except an erasable surface for non-permanent markers. Selman teaches a calendar for a refrigerator that has a surface adapted for erasably receiving writing ink thereon. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the sheet/pages of Baily in view of Leppke by making the surface of a page erasable for non-permanent markers as taught by Selman to allow the surface to be reusable.

15. Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 1,326,832 to Baily in view of US Patent 1,624,741 to Leppke as applied to claims 1 and 9 above, and further in view of US Patent 1,881,636 to Johnson. Baily in view of Leppke discloses every element as claimed and discussed above except the pages includes a chalkboard surface. Johnson teaches a portable chalkboard with panels that are hingable together. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify a page of a chalkboard material as taught by Johnson to enable writing indicia on it.

16. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 1,326,832 to Baily in view of US Patent 1,624,741 to Leppke as applied to claim 9 above, and further in view of US Patent 2,527,132 to Jackson. Baily in view of Leppke discloses every element as claimed and discussed above except the hinge pin spring loaded. Jackson teaches rotating shelves with a shaft/hinge pin that is received in a



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flange housing (24) and is spring loaded (16). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the apparatus of Baily in view of Leppke by using the mounting mechanism that is spring loaded as taught by Jackson to make it easy to be removed or added in as a complete unit.

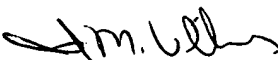
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA  
6/21/06



JANET M. WILKENS  
PRIMARY EXAMINER  
Art Unit 3637